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12 *Netgear, Inc.*

13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN JOSE DIVISION**

16 TP-LINK CORPORTATION PTE LTD. &
17 TP-LINK CORPORATION LIMITED
18 Plaintiffs,

19 v.

20 NETGEAR, INC.

21 Defendant.

CASE NO. 5:24-cv-03478-PCP

**DECLARATION OF BLAKE R. DAVIS IN
SUPPORT OF DEFENDANT'S MOTION TO
ENLARGE TIME TO RESPOND TO
COMPLAINT AND MOTION FOR
PRELIMINARY INJUNCTION**

Judge: The Honorable P. Casey Pitts

1 I, Blake R. Davis, declare as follows:

2 1. I am a partner with the law firm of Latham & Watkins LLP and counsel for
3 Netgear Inc. (“Netgear”) in this action.

4 2. I submit this Declaration in support of Defendant Netgear Inc.’s Motion to
5 Enlarge Time to Respond to Complaint and Motion for Preliminary Injunction. I am over 18
6 years of age. The facts set forth below are within my personal knowledge, to which I could and
7 would testify competently if called upon to do so.

8 3. Pursuant to Civil L.R. 6-3, the following (1) sets forth with particularity the
9 reasons for the requested enlargement or shortening of time; (2) describes the efforts Netgear has
10 made to obtain a stipulation to the time change, including as required by Civil L.R. 37-1(a); (3)
11 identifies the substantial harm or prejudice that would occur if the Court did not change the time;
12 (4) discloses all previous time modifications in the case; and (5) describes the effect the
13 requested time modification would have on the schedule for the case.

14 **I. Reasons for the Requested Enlargement of Time**

15 4. Netgear requests a 59-day extension—from July 2 to August 30, 2024—for its
16 response to TP-Link’s Motion for Preliminary Injunction (“PI Motion”) and 30 days—from July
17 9 to August 8, 2024—to respond to TP-Link’s Complaint for Breach of Contract and Declaratory
18 Judgment (“Complaint”).

19 5. Netgear’s request for the foregoing extension is necessary for Netgear to
20 investigate and assess the veracity of the numerous allegations and evidence cited in the
21 Complaint and PI Motion, particularly the new allegations and evidence in the PI Motion that
22 were not present in the Complaint. TP-Link’s PI Motion is a 23-page paper with 25 exhibits, two
23 fact witness declarations, and two expert declarations. It consists of 70 pages of fact and expert
24 opinion that Netgear must address with fact and expert-witness declarations and argument of its
25 own. For example, to respond to the PI Motion, Netgear must interview witnesses; gather and
26 review relevant documents in Netgear’s possession; and identify, engage, consult experts, and
27 prepare declarations on the technical and standard-related issues TP-Link’s experts opined on.
28 Further, while TP-Link’s Complaint alleged in one conclusory sentence the ’714 Patent was

essential to Section 4.7.1 of the Wi-Fi 6 Test Plan (Dkt. 1, ¶ 31), TP-Link's PI Motion, in contrast, alleges that three standards practice the patent, relying on a 37-page declaration from Dr. Almeroth. *See* PI Motion at 10 n.2; Dkt. 30.

6. Netgear was not able to prepare or investigate TP-Link's claims prior to the filing of the Complaint and PI Motion. TP-Link did not provide any notice to Netgear that it intended to file the Complaint or a Preliminary Injunction. Indeed, until TP-Link filed the Complaint, neither Netgear nor TP-Link had alleged Netgear's '714 Patent was essential to any standard or that Netgear owed any RAND obligations.

7. TP-Link could have brought the claims in the Complaint or PI Motion earlier. The parties' dispute began fourteen months ago in April 2023 when Netgear filed complaints in the Central District of California ("CDCA") and the International Trade Commission ("ITC") alleging Plaintiff TP-Link infringes U.S. Patent No. 7,936,714 and seeking injunctive relief. No. 2:23-cv-02540 (C.D. Cal.), Dkt. 1 (Apr. 4, 2023); Inv. No. 337-TA-1361, Dkt. 1 (Apr. 3, 2023).

8. In the CDCA case, on May 8, 2023, TP-Link requested a stay of the CDCA action under 28 U.S.C. § 1659(a). No. 2:23-cv-02540 (C.D. Cal.), Dkt. 21; 88 Fed. Reg. No. 29693. The case was then stayed prior to TP-Link filing an answer or any counterclaims. In the ITC case, neither party alleged the '714 patent was essential to any standard. TP-Link did not raise any defense or counterclaim that Netgear had breached any licensing obligations by filing an ITC Complaint asserting infringement of the '714 patent.

9. Netgear also requests that the Court shorten the time for TP-Link to respond to Netgear's request for an enlargement of time to Thursday, June 27, 2024.

II. Efforts to Obtain a Stipulation

10. Netgear attempted in good faith to obtain TP-Link's consent to an extension. Counsel for Netgear contacted TP-Link's counsel by email Thursday, June 20, the first business day after TP-Link filed the PI Motion, requesting extensions to respond to the Complaint and PI Motion. Netgear proposed extending its opposition to the PI motion to October 10.

11. TP-Link's counsel responded Friday, June 21, stating "TP-Link is open to reasonable accommodations, to the extent needed, but we do not see any basis for a 3 month delay to address an issue that is already urgent."

12. I telephonically conferred on Friday, June 21 with TP-Link's counsel regarding briefing extensions. TP-Link's counsel indicated TP-Link may agree to up to a two-week extension, and requested that Netgear provide a shortened extension.

13. The next business day on Monday, June 24, Netgear provided the following compromise proposal:

Event	Current	Proposed
Netgear's Response to the Complaint	July 9, 2024	August 8, 2024
Netgear's Opposition to the PI Motion	July 2, 2024	September 2, 2024
TP-Link's Reply	July 9, 2024	September 9, 2024
Hearing on PI Motion	August 1, 2024	September 26, 2024

14. TP-Link's counsel responded later that day disagreeing with Netgear's proposal based on the "urgent nature" of TP-Link's Motion, and proposed the following schedule:

Event	Current Date	Compromise Proposal
Netgear's Opposition to TP-Link's Motion for Preliminary Injunction	July 2, 2024	July 16, 2024
Netgear's Answer or Response to the Complaint	July 9, 2024	July 16, 2024
TP-Link's Reply to Netgear's Opposition re Preliminary Injunction	July 9, 2024	July 25, 2024
Hearing Regarding TP-Link's Motion for Preliminary Injunction	August 1, 2024	August 8, 2024

15. On Tuesday, June 25, I notified TP-Link's counsel that Netgear intended to file a motion to extend time to respond to the Complaint and PI Motion under Civil Local Rule 6-3. Netgear also requested in view of the current July 2 deadline for Netgear to respond to TP-Link's preliminary injunction motion, for TP-Link to agree that it would maintain its schedule proposal and Netgear would not need to file its opposition to the PI motion on July 2 pending resolution of the motion to extend time. Alternatively, Netgear asked if TP-Link would agree to shorten the time for its opposition to Netgear's motion to extend time to Thursday, June 27.

16. TP-Link's counsel responded that it would not confirm what schedule it would propose in its opposition because TP-Link "will decide upon the content of our opposition after

1 reviewing Netgear’s motion.” TP-Link did not address Netgear’s request regarding the
 2 applicability of the forthcoming July 2 deadline, and represented TP-Link “will endeavor to
 3 expedite our response to Netgear’s motion in advance of the four day deadline” but would not
 4 agree to Netgear’s proposal for a shortened response.

5 **III. Netgear Will Suffer Prejudice Without The Enlargement of Time**

6 17. As discussed above, Netgear’s requested extension is necessary for Netgear to
 7 have a full and fair opportunity to respond to TP-Link’s claims.

8 18. TP-Link’s proposal of a two-week extension is not enough time for Netgear to
 9 evaluate and address TP-Link’s Complaint and PI Motion, including its voluminous exhibits and
 10 four declarations. Netgear’s requested extension is necessary to provide sufficient time to fairly
 11 respond to TP-Link’s argument and evidence, particularly since this is the first time in the
 12 fourteen months of litigation that TP-Link has advanced this argument. For example, to respond
 13 to the PI Motion, Netgear must interview witnesses; gather and review relevant documents in
 14 Netgear’s possession; and identify, engage, consult experts, and prepare declarations on the
 15 technical and standard-related issues TP-Link’s experts opined on.

16 **IV. Previous Time Modifications**

17 19. This is Netgear’s first request for time modification and without one, Netgear will
 18 suffer prejudice. There have been no previous time modifications to the case schedule, whether
 19 by stipulation or Court order.

20 **V. Effect on the Schedule**

21 20. The requested time modification would have minimal effect on the schedule for
 22 the case. The requested extension only impacts briefing for TP-Link’s Preliminary Injunction,
 23 including moving TP-Link’s noticed hearing date from August 1 to September 26, 2024. No
 24 other deadlines will be affected because the Court has not yet entered a Case Management Order.
 25 The Initial Case Management Conference is set for September 5, 2024 and the Joint Case
 26 Management Statement is due August. 22, 2024.

1 I declare under penalty of perjury under the laws of the United States and the State of
2 California that the foregoing is true and correct.

3
4 /s/ Blake R. Davis
Blake R. Davis

5 *Attorney for Defendant*
6 Netgear, Inc.

7 **SIGNATURE ATTESTATION**

8 I, Kevin C. Wheeler, am the ECF User whose identification and password are being used
9 to file the foregoing Declaration of Blake R. Davis In Support of Defendant's Motion to Enlarge
10 Time to Respond to Complaint and Motion for Preliminary Injunction regarding signatures, I
11 attest that concurrence in the filing of this document has been obtained.

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13 Dated: June 25, 2024

/s/ Kevin C. Wheeler

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